

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13557, of Dr. Frank G. Davis, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Section 3102) to permit the continuation of a temporary community service center as a gallery and office space of the Sign of The Times Cultural Workshop and Gallery, Inc., a non-profit organization, in an R-2 District at the premises 605 - 56th Street, N.E., (Square 5216, Lot 20).

HEARING DATES: September 23 and October 21, 1981
DECISION DATE: November 4, 1981

DISPOSITION: The Board DENIED the application by a vote of 3-0 (Walter B. Lewis, Douglas J. Patton and Connie Fortune to DENY; Charles R. Norris not voting, having recused himself; William F. McIntosh not voting, not having heard the case).

FINAL DATE OF ORDER: April 29, 1982

ORDER

The applicant filed a timely Motion for Reconsideration dated May 4, 1982. The basis for the request was that if the Board erred in allowing the operation of the subject program at the present location for several years, then the Board should be held responsible for its action and not now preclude the program from continuing at this location.

The Board notes that the original application, BZA No. 11623, was advertised as a use variance. In the Conclusions of Law, in the final Order in that application, dated July 31, 1974, the Board stated as follows:

"Based on the above Findings, the Board is of the opinion that the applicant's factual presentation before this Board conforms to the definition of use of a community service center as opposed to a strict office use as applied for by the applicant as a use variance.

The Board concludes, that because of the facts before them in this case, that the applicant does not require a variance but comes within the purview of the regulations as a special exception use. Based upon the facts of this case the Board interprets this

application as a request to operate a temporary community service center and concludes that the applicant has satisfied the condition of Section 3104.46 of the regulations and that the granting of this application is in harmony with the general intent and purpose of the Zoning Regulations and Maps and will not adversely affect the zoning map and plans."

The application was granted for three years. The Board further notes that it granted BZA Application No. 12510, dated December 5, 1977 to continue the use under Paragraph 3104.46 for a period of three years.

The Board notes that in the Conclusions of Law of BZA Order No. 13557, the Board concluded that the application could not be approved as a special exception and that former Boards erred in exceeding their authority in approving application Nos. 11623 and 12510 as special exceptions under Paragraph 3104.46. Paragraph 3104.46 permits a temporary community service center in an R-4 District and is not applicable to the subject site, which is zoned R-2 and not controlled by R-4 zoning regulations.

The Board notes that the applicant was informed by the Executive Director of the Zoning Secretariat, by letter dated June 29, 1981, that the requested relief was incorrectly filed as a special exception, that the application was to be processed under Paragraph 8207.11 as a use variance and that the burden of proof to be met by the applicant was accordingly different. The Board concluded in Order 13557, that the applicant did not provide evidence that a hardship upon the owner due to a unique or exceptional condition in the property would preclude the use of the subject property for purposes for which it is zoned and, therefore, the applicant did not meet the burden of proof required by Paragraph 8207.11.

Upon consideration of the Motion and the Order, the Board finds that the motion fails to state any respects in which the final decision of the Board is erroneous. The only basis for the applicant's motion is a past error of the Board.

The Board had advised the applicant approximately three months in advance of the hearing of the burden of proof that had to be met and of the section of the Zoning Regulations under which the application would be advertised. The staff had invited the applicant, if he had any questions, to review them with the staff. The subject application was scheduled for hearing on September 23, 1981, but was continued until October 21, 1981, because the applicant was not prepared to address the use variance question.

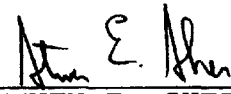
The Board concludes that it has made no error in deciding the application. It is therefore ORDERED that the Motion for Reconsideration is DENIED.

DECISION DATE: June 2, 1982

VOTE: 3-0 (Connie Fortune, Walter B. Lewis and Charles R. Norris to DENY; William F. McIntosh and Douglas J. Patton not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: JUN 22 1982

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."